

Comment:

In the Matter of Petition R-20-0034: To Restyle and Amend Supreme Court Rule 31; Adopt New Rule 33.1; Amend Rules 32, 41, 42 (Various ERs from 1.0 to 5.7), 46-51, 54-58 and 75-76

Submitted on Behalf of:

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On behalf of Arizona Town Hall, we write to summarize the comments made by members of the public – mostly nonlawyers – about two of the recommendations proposed by the Task Force on the Delivery of Legal Services and included in Petition No. R-20-0034: creating a new category of nonlawyer legal service provider, the limited licensed legal practitioner (“Triple LP”), and authorizing “alternative business structures” (“ABS”) that would allow lawyers and non-lawyers to share economic interests or decision-making authority in firms providing legal services.

Arizona Town Hall, a nonpartisan nonprofit organization, has been bringing Arizonans together to learn about and discuss important and frequently controversial issues facing the state with the aim of reaching consensus solutions to these issues. Because of Arizona Town Hall's experience in addressing matters of public concern, the Arizona Supreme Court asked it to discuss with members of the public the Triple LP and ABS recommendations. Thus, beginning in April 2020, Arizona Town Hall organized and hosted seven online "Zoom" town hall discussions in which 114 Arizonans from around the state discussed the Triple LP and ABS recommendations. These 114 Arizonans included individuals from Yuma, Sierra Vista, Mohave County, and other rural areas of the state, as well as individuals who work with people who are often unable to afford legal services and find themselves in the "justice gap."

The consensus viewpoints of the Arizonans who participated in these town hall meetings are summarized below. Each summary was read to and approved by the participants at their respective town hall meeting. Arizona Town Hall also surveyed the participants to measure their level of support for the two recommendations, and the survey results are also set out below. As reflected in both the summary and survey, the town hall participants reached consensus on the following points:

First, allowing Triple LPs to provide legal services in certain areas would help address the justice gap by giving Arizonans access to lower-cost legal services in these areas.

Second, Triple LPs will be an asset to vulnerable populations in the state who need legal services if these populations can be assured that Triple LPs will provide high quality legal services by meeting appropriate education, training, and certification requirements.

Third, the delivery of legal services involves both business skills and professional responsibilities. Although allowing non-lawyers to invest in or own law firms raises conflicts of interest and other concerns, ABS could help lawyers by freeing up their time to practice law and making their practices more profitable, which could benefit clients by making legal services less expensive and/or more available.

Fourth, with appropriate safeguards and regulations to avoid conflicts of interest and inappropriate influence by nonlawyers and to preserve lawyer independence, ABS could bring complementary services together in a collaborative way that could benefit clients.

1. Arizona Town Hall Board of Directors Online Town Hall – Thursday, April 2, 2020

Allowing Triple LPs to provide legal services on a limited basis is an exciting opportunity to increase access to the justice system, especially for people of modest means. Triple LPs would be more economical and help expedite simple legal matters, and may reduce the intimidation factor that prevents many clients from seeking legal

assistance. Triple LPs would also be well suited to address certain types of legal matters, such as eviction prevention.

The success of Triple LPs will depend largely on the scope of practice they are allowed to undertake, as well as the quality and extent of their required training. Similar initiatives have been highly effective in other fields such as health care. Ultimately, it may take time for Arizonans to embrace Triple LPs, but adoption will be supported by strong licensure requirements focused on ensuring the quality of services provided by Triple LPs.

The potential benefits of allowing non-lawyers to own or invest in law firms are unclear. Allowing Triple LPs to own interests in law firms may support the Triple LP initiative by, among other things, creating a financial incentive for people to become Triple LPs. If non-lawyers are allowed to own or invest in law firms, appropriate protections should be considered, such as a limitation on the percentage of a particular law firm that can be owned by non-lawyers.

2. Yuma Online Town Hall – Monday, April 27, 2020

Allowing Triple LPs to provide legal services on a limited basis would help address the “justice gap” by giving Arizonans access to lower-cost legal services in specific areas. For example, Triple LPs could assist clients with landlord/tenant issues (such as eviction proceedings), unemployment claims, and certain types of family law matters. The availability of Triple LPs to provide those types of services would be especially beneficial to individuals who cannot afford to hire a lawyer by building upon the services already provided by Community Legal Services, which has limited resources. Triple LPs would also benefit other individuals who are sensitive to cost in connection with “run of the mill” legal matters that do not require a licensed attorney.

The success of Triple LPs will require thoughtful consideration and implementation of appropriate education and certification requirements, and ongoing oversight by the State Bar. Arizona should look to other states that have Triple LPs for guidance in those areas and should consider the similarities and differences between Triple LPs and paralegals or other non-attorney legal service providers. Triple LPs should also be required to disclose their scope of practice, and to refer clients to licensed attorneys when appropriate.

The delivery of legal services involves both business skills and professional responsibilities. Time lawyers spend on business activities is not available to provide legal services to clients. An ABS could benefit lawyers by freeing up their time to practice law and making their practices more profitable, which could benefit clients by making legal services less expensive and/or more available. However, there are significant concerns that wealthy investors would dominate the ABS and reap the economic benefits, so the ABS would not help anyone in the justice gap. There are also

concerns about malpractice liability, accountability, corruption, and conflicts of interest. This model might be of less concern if limited to nonprofits or settings involving small dollar amounts.

3. Sierra Vista Online Town Hall – Tuesday, April 28, 2020

Allowing Triple LPs to provide legal services on a limited basis would be a good step forward to increase the number of professionals who can properly advise Arizonans in need of legal services. For example, Triple LPs would help address the “justice gap” by giving Arizonans access to lower-cost legal services in specific areas, such as certain types of family law matters and justice court proceedings.

There may be opposition to the Triple LP recommendation, including from licensed attorneys and paralegals, who would tend to view Triple LPs as new competitors. In that regard, making structural changes to the legal profession will be difficult and raise both known and unknown issues. With thoughtful planning and implementation, however, Triple LPs could become an important asset to the Arizona justice system, much as nurse practitioners have proven to be very successful in the medical field despite initial pushback.

Creating ABS with non-lawyer investors raises concerns around possible undue influence and conflicts of interest including loss of independent legal judgement and potential bias in cross-selling of non-legal services. If attorneys need help with business management, they can hire business managers without making them owners. If attorneys need other skill sets, they can retain consultants. However, non-lawyer investment options may foster law firm growth increasing the availability of legal services to the public. Legal services are already being offered through technology-enabled services such as Rocket Lawyer and LegalZoom, and they are not regulated in the same way as attorneys. This proposal may turn the traditional law office into something more like a collaborative incorporating other types of practitioners.

4. Mohave County Online Town Hall – Wednesday, April 29, 2020

Allowing Triple LPs to provide legal services on a limited basis would be a good step forward to address the “justice gap” in Arizona. Triple LPs would be a huge asset to vulnerable populations, including Arizonans who cannot afford to hire an attorney and/or live in rural areas of the state, where physical access to courts is also a challenge.

The success of Triple LPs will require thoughtful consideration and implementation of appropriate education and licensure requirements. For example, the qualifications for Triple LPs practicing in specified areas, such as certain types of family law matters and justice court proceedings, need to be carefully determined. Arizonans who stand to benefit the most from the availability of Triple LPs may also tend to come from our most vulnerable populations, and we need to ensure they are capably

represented in the legal matters that Triple LPs are authorized to handle. The State Bar should also consider requiring cultural sensitivity training as a component of the education requirements applicable to Triple LPs.

Practicing law is not only a profession but it is a business and should be allowed to operate and expand without ownership restrictions that other businesses do not have within the ethical requirements currently imposed. Ownership should be distinguished from investing. Pure investment may not be a good result. However, allowing law firms to partner with non-lawyer-owned complimentary practices such as accounting firms could offer client benefits provided the alternative business structures are subject to the same requirements to which lawyers are currently held responsible. Legal services are already being offered through technology-enabled services such as Rocket Lawyer and LegalZoom, and this proposal would allow them to hire lawyers and expand their service offering to include providing legal advice.

5. Addressing the Justice Gap in Rural Arizona – Monday, May 4, 2020

Allowing Triple LPs to provide legal services on a limited basis would be a good step forward to address the “justice gap” in rural Arizona. The COVID-19 pandemic has shown the inequities that exist within our population with respect to the justice and other systems. For example, our border communities have high levels of unemployment and poverty, and many Arizonans in those communities speak limited English. Tribal communities also face challenges regarding access to justice. These communities need legal services that are both more affordable and more accessible.

Triple LPs would be an asset to these vulnerable populations, and other Arizonans, provided they can be assured that Triple LPs will provide high-quality legal services and be accountable to their clients. In that regard, the success of Triple LPs will require thoughtful consideration and implementation of appropriate education and licensure requirements. There should also be mechanisms requiring clear communication of a Triple LP’s area of expertise and scope of practice, enabling potential clients to understand what the Triple LP can and cannot do on their behalf. Technology (e.g., a web portal) could be used as one tool to advertise the availability of Triple LPs within each geographic region of the state and area of practice.

When analyzing potential for an ABS to address the needs of those in the justice gap, analogies to the health care system seem apt. The opportunity for non-lawyers to partner with lawyers is a business opportunity that may free up lawyer time to serve more clients, thereby addressing the justice gap. However, there is concern that commercialization of legal practice will negatively affect the legal profession and the legal system much like new forms of ownership of hospitals and provider entities has negatively affected the health care profession and system. Ultimately, both professions and systems are about more than business. ABS may ultimately help to address the justice gap and be good for clients but only if carefully regulated to assure that lawyers’

professional responsibilities to clients remain paramount. To that end, regulations should require that lawyers maintain majority interests in and control of the ABS.

6. Addressing the Justice Gap for Arizona's Vulnerable Populations – Tuesday, May 12, 2020

There is significant unmet need for legal services in Arizona. For low-income people, there is only one legal aid lawyer for every 10,000 Arizonans. In the Northeastern part of the state there are 600,000 people eligible for free or reduced cost services but only 6,000 clients were served last year. Creating a new tier of legal service provider whose services would be more affordable could help fill this unmet need, assuming a system of rigorous training and regulation is implemented.

Triple LPs are analogous to nurse practitioners in the health care system, who may have their own independent practice or may work for a government, for-profit or non-profit agency setting. One advantage of developing a tier of paraprofessionals who can provide legal advice and advocacy is that they are more culturally competent and may be better accepted and understood by the communities they serve than lawyers would be.

If Triple LPs were available to assist low income clients and their services were affordable that could provide significant benefit, particularly in the areas proposed for licensure. Domestic violence victims, and clients seeking to maneuver within complex administrative systems such as unemployment and worker's compensation, need help to assert and protect their interests. However, there is concern that the Triple LP program could be just a band aid, and that in the end it will be one more step in the evolution of our justice system as a two-tiered system in which there is one type of justice for people of means and another for people without means. For example, in Washington, which has implemented Triple LPs, the Triple LPs have already begun to price their services beyond the means of the low-income people their licensing was intended to serve.

While bringing complimentary services together in a collaborative way could benefit clients with a more holistic solution, ethical challenges and conflicts of interest may arise if non-lawyers are allowed to invest in or own law firms. Legal services are already being offered through technology-enabled services such as Rocket Lawyer, LegalZoom, and others. Additionally, if law firms choose to do so they can already contract for ancillary services such as accounting without providing an ownership/equity position to a corporate entity. This proposal could potentially change the practice of law by allowing large non-lawyer corporations to enter the practice of law. Whether allowing non-lawyer investment will benefit people in the justice gap remains an open question.

7. Addressing the Justice Gap with Arizona's Law Librarians Online Town Hall – Friday, May 22, 2020

Allowing Triple LPs to provide legal services on a limited basis would be a good step forward to address the “justice gap” in Arizona. With effective marketing, Triple LPs could provide services to individuals who would otherwise be pro per litigants, as well as other Arizonans who need access to more affordable legal services in justice court, family law, probate, and other matters. Considerable oversight will be important, however, and there needs to be a clear distinction between lawyers and Triple LPs so consumers can easily understand the scope of services a Triple LP is licensed to provide.

The Triple LP initiative would also benefit the legal profession in Arizona, much like diversification and the creation of multiple “tiers” of practitioners have benefited the medical, education and social work fields. By adding Triple LPs to their ranks, law firms would be able to expand their services and therefore their client rosters. The possibility of being trained as a Triple LP would also benefit individuals who cannot afford law school.

The restrictions on ownership of law firms dates to a time when the practice of law was more of a profession and less of a business than it is today. The question was raised as to whether allowing non-lawyers to own law firms would help close the justice gap and the answer is dependent on how the expansion of ownership moves forward. There was consensus that issues of the duty of independent legal judgment to clients have been addressed by the proposal. ABS would encourage partnerships between lawyers including accountants and marriage counselors by allowing them to become more than just employees. Non-attorneys are likely to receive privileged communications so statutes regarding privilege and confidential communications will need to be addressed.

Summary Survey Responses

Total Responses Received: 74

Total Number of Participants: 114

1. Are you a lawyer, or are you related to a lawyer? Check all that apply.

I am a lawyer. 20%

I am not a lawyer. 63%

I am related to a lawyer. 17%

2. Have you ever been involved in the justice system?

Yes. 59%

No. 41%

3. If yes, which of the categories below were you involved in? Check all that apply.

Percentages are based on total collected responses and do not reflect whether a respondent selected more than one option.

Family law.	26%
Housing.	12%
Employment.	10.9%
Accessing Services for children and families.	12%
Creditor/debtor rights.	7.6%
Criminal law.	7.6%
Other.	23.9%

4. Would you support a limited license legal practitioner program?

	# of Responses	Percentage
Strongly Against	1	1.39%
Against	1	1.39%
Neutral	9	12.50%
Support	24	33.33%
Strongly Support	37	51.39%
TOTAL:	72	

5. Would you support non-lawyers owning or investing in law firms?

	# of Responses	Percentage
Strongly Against	4	5.6%
Against	11	15.5%
Neutral	34	47.9%
Support	16	22.5%
Strongly Support	6	8.5%
TOTAL:	71	